

HR Brief

May 2015

Supreme Court Issues Ruling in Pregnancy Discrimination Case

On March 25, 2015, the U.S. Supreme Court ruled in favor of a former employee of United Parcel Service (UPS). The employee was faced with the choice to either continue working her labor-intensive job during pregnancy or take unpaid leave.

In its *Young v. UPS* decision, the Supreme Court held that the employee should be given the opportunity to prove that UPS violated the Pregnancy Discrimination Act (PDA) by not providing her the same light-duty accommodation that was given to other UPS employees who were considered injured or disabled. The PDA requires that women affected by pregnancy, childbirth or a related medical condition be treated the same for all employment-related purposes as "other persons not so affected but similar in their ability or inability to work."

The employee in this case, Peggy Young, worked as a part-time driver for UPS. In 2006, Young became pregnant and was advised by her doctor that she should not lift more than 20 pounds. However, UPS required drivers to be

able to lift up to 70 pounds and denied Young's lifting restriction.

Young sued UPS, alleging that it violated the PDA because it had a light-duty policy for other types of workers, including those who were injured on the job or disabled under the Americans with Disabilities Act (ADA), but not for pregnant workers. UPS argued that it treated her as it would treat other relevant individuals and therefore did not discriminate against her based on pregnancy.

In 2008, the ADA's definition of "disability" was expanded, requiring employers to accommodate employees with temporary lifting restrictions originating outside of work. In 2014, the EEOC also issued guidance requiring employers that provide light-duty assignments to employees who are unable to perform their full duties to make similar accommodations for pregnant employees. Many employers may have already changed their policies in light of this guidance.

The Supreme Court sent the case to the lower court for further review and also outlined standards for PDA cases. An individual may show discrimination by showing that her employer did not accommodate her while pregnant but did accommodate others who are similar "in their ability or inability to work."

The decision is a victory for pregnant workers because it establishes an easier framework to prove illegal discrimination. Employers should review their policies to make sure that they do not discriminate against pregnant workers in violation of applicable laws. A significant factor in determining whether discrimination occurred will be if the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers.

DID YOU KNOW?

Many employers have implemented wellness programs to control health care costs. However, the Equal Employment Opportunity Commission (EEOC) has filed several lawsuits against employer-sponsored wellness programs it says violate the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA).

Until more clear guidance is available, you should take note of the issues highlighted in the EEOC cases. Specifically, you should review your wellness plan to ensure participation is voluntary and that employees are not excessively penalized for refusing to participate. In addition, you should evaluate whether the information collected about employees is protected under the ADA, GINA or any other employment benefit law.

HR Summertime Checklist

Employers and HR departments that take time to prepare for the summer months may be able to enjoy them a bit more. Now is a good time to start considering the employee management areas outlined below to ensure a smooth summer. Think about how each area impacts your organization and whether any action should be taken.

PTO/Vacation Requests - Do managers and supervisors know how to administer employee requests to make sure appropriate staffing levels are maintained and employees are treated fairly?

Summer Hours - Will your company begin or continue a "summer hours" policy? Will it be company-wide?

Dress Code - Does your company allow for a more relaxed dress code during the summer? How long does this last?

Staffing - Are you a seasonal employer who should start hiring for the summer? Are there layoffs to be administered prior to summer? Will you be hiring interns?

Of course, the above is not an all-inclusive list and each organization is unique. Think about what the summertime season means for your organization and get prepared.

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